

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Application of

MILFORD BROADCASTING CO.

SHARON A. MAYER

For Construction Permit
for a new FM Station on
Channel 271C2
Milford, Iowa

) MM Docket No. 92-317
)
) File No. BPH-911003MI
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) File No. BPH-911004MG
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To: Honorable Edward Luton
Administrative Law Judge

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

when he visited the Bank at that time and, assuming that a period
for review had expired, he did not question return of the file to

attempt to explain its failure to comply with the Rule can hardly be credited.¹ Mr. Galbraith seems to infer that because the Bank's representative handed him the file, he was free to take it away. This does not make sense. Obviously, Mr. Galbraith requested the file. His comment that he was never contacted by the Bank about any public inquiry is not exculpatory. An applicant cannot delegate its responsibility to maintain its file to a custodian. Centerville Broadcasting Co., 21 RR 2d 217, 227 (Rev. Bd. 1971). See Marvin C. Hanz, 22 FCC 2d 147, 18 RR 2d 830 (1970). It is the applicant's responsibility to ensure that a copy of its application is always available for public inspection during normal business hours.² United Broadcasting Co., 58 FCC 2d 1346, 36 RR 2d 1556, 1574 (Rev. Bd. 1976); Kennebec Western Broadcasting Company, 51 FCC 2d 1154, 1157, 33 RR 2d 343, 348 (Rev. Bd. 1975). MBC ignored that responsibility and Mr. Galbraith's explanation underlines that ignorance.³ In consequence, the public file issue requested by

¹ Mr. Galbraith does not dispute the Affidavit of Gloria J. Fitzpatrick, Branch Manager of the Northwest Federal Savings Bank, attached to Mayer's Motion.

² The General Instructions to FCC Form 301 specifically state that an applicant should be familiar with the current broadcast rules in 47 Code of Federal Regulations.

³ MBC's argument that no one was harmed by the two-month absence of its public file does not excuse its non-compliance with the Rule. The file was missing for a critical time after the filing of MBC's application and was not there when a competing applicant requested it. If MBC had not amended its application, one wonders how long the file would have been missing.

Mayer is an entirely valid issue affecting the comparative qualifications of MBC.⁴

B. The Attempt To Intimidate Mayer

5. MBC's response to Mayer's request for an issue with respect to Mr. Galbraith's representation to Mayer about the FBI investigating her only adds further support for the requested issue. In his Declaration, Mr. Galbraith denies that he said anything to Mayer about "an investigation of Ms. Mayer by the FBI or anyone else" His statement directly conflicts with Mayer's sworn assertion and clearly raises a substantial and material question of fact mandating further inquiry in hearing. Jimmy H. Howell, 30 RR 2d 365, 369 (Rev. Bd. 1974) (directly conflicting affidavits required appropriate issue); Five Cities Broadcasting Co., Inc., 24 RR 743. (Where affidavits contradict each other, the only appropriate resolution of the conflict is on the record in hearing).

6. Mayer has provided her additional attached Declaration refuting Mr. Galbraith's denial that he ever referred to an FBI investigation. Attached to her Declaration are her written notes

⁴ The cases cited by MBC in support of its "technical violation" of Rule 1.526 are not pertinent to the circumstances in this case. In KOWL, Inc., 31 RR 2d 1589 (Rev. Bd. 1974), the absence of the public file was very brief involving only a few days late in the month. In FM 103, Inc., 38 RR 2d 1622 (ALJ 1976) the applicant's public file was located in the wrong community. There was no allegation that the file was not available. Similarly, Rust Communications Group, Inc., 36 RR 2d 47 (Rev. Bd. 1976), involved allegations concerning documents missing from the public file, not that the file was missing.

of the meeting in which she recounts Mr. Galbraith's statements, including his reference to an FBI investigation. Mayer's notes which were recorded soon after the meeting between Mr. Galbraith and Mayer add further weight to her statement and to her recollection of the incident. The issue now in direct conflict is not insignificant. It involves an affirmative effort at intimidation of a competing applicant, a grave matter which cannot be dismissed lightly. MBC's effort to ward off such an inquiry as a triviality undeserving of inquiry is misplaced.⁵ Misbehavior by an applicant involving an abuse of process which threatens the integrity of the Commission's licensing process continues to be of serious concern to the Commission. The Commission's Policy Regarding Character Qualifications in Broadcasting Licensing, 102

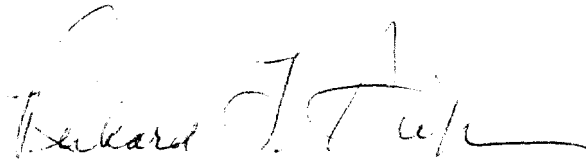
violation of a fundamental licensee responsibility, is predictive of the applicant's stewardship as a licensee and thus pertinent to its basic qualifications. Mr. Galbraith's effort to intimidate Mayer exceeded the bounds of either investigation or negotiation and reflects on the propensity for truthfulness that the Commission might expect from MBC as a licensee. Each of these affirmative acts requires inquiry on the record.

Wherefore, it is respectfully requested that Mayer's Motion be granted.

Respectfully submitted,

SHARON A. MAYER

By:



Richard F. Swift
Her Attorney

TIERNEY & SWIFT
1200 18th Street, N.W.
Suite 210
Washington, D.C. 20036
(202) 293-7979

Date: March 26, 1993

DECLARATION

I, Sharon A. Mayer, hereby state as follows:

I am an applicant for a new FM radio station on Channel 271C2 at Milford, Ia.

I have read the affidavit of Kevin Galbraith dated March 16, 1993 which was attached to the Opposition to Motion to Enlarge Issues of Milford Broadcasting Company dated March 16, 1993

Mr. Galbraith states in the last paragraph of his Affidavit that "I did not make any statement whatsoever concerning an investigation of Mrs. Mayer by the FBI or anyone else and have made no attempts to initiate any such investigation."

Mr. Galbraith's statement is not accurate. I can state with absolute certainty that, during our meeting on Dec. 30, 1991, at the Picadilly restaurant in Milford, he said to me "I already have the FBI checking you out." That statement is something I do not hear and its singular uniqueness makes it something I will not forget. Attached to this Declaration are my notes which were prepared approximately two weeks after our Dec. 30 meeting. These notes accurately reflect the contents of our conversation that day.

I declare under penalty of perjury that the foregoing statement and my attached notes are true and correct.



Sharon A. Mayer

Date: 3-26-93

(The original signed copy of this Declaration will be filed with the Commission upon receipt by counsel.)

meeting w Kevin Culbreth - Piccadilly 3.00pm
mon - 12 - 30 - 91

Intro. ourselves -

He asked me how - I learned of Station
told him I heard it on the Radio, though
someone already was going to put one on
the air - found out, otherwise, decided to
apply.

I asked him how/why he decided to have
Station here. he said it was nice area -

About done with talk and he says
to me "I already have the FBI checking
you out" I said "Oh Really" They'll find
out alot! Good heavens what a thing
to say. Then he was quiet.

Said we'd probably talk again.

Exhibit No. 1

October 8, 1991

Mr. Kevin W. Galbraith
President
Milford Broadcasting Company
c/o 202 Data Systems
Station Square Three
Paoli, PA 19301

Dear Kevin:

The FCC's rules requires that you publish local notice of the filing of the application for the new FM station in Milford.

Mr. Kevin W. Galbraith
October 8, 1991
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Please feel free to call me if you have any questions.

Sincerely,

Linda J. Eckard

LJE:js
Enclosure

cc: Ms. Sharyl Potratz--w/encl.

PUBLIC NOTICE

On October 3, 1991, an application for a new FM radio construction permit for Channel 271C2 (102.1 MHz), Milford, Iowa, was filed with the Federal Communications Commission by Milford Broadcasting Company. The officers, directors and shareholders of Milford Broadcasting Company are Kevin W.

CERTIFICATE OF SERVICE

I, Hazel Y. Goodger, Secretary in the law firm of Tierney & Swift, hereby certify that I have on this 26th day of March, 1993, sent copies of the foregoing "Reply To Opposition" to the following:

* The Honorable Edward Luton
Administrative Law Judge
Office of Administrative Law Judges
Federal Communications Commission
2000 L Street, N.W., Room 223
Washington, D.C. 20554

* Paulette Laden, Esquire
Hearing Branch,
Enforcement Division
Mass Media Bureau
Federal Communications Commission
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Washington, D.C. 20554

Linda J. Eckard, Esquire
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Suite 222
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for Milford Broadcasting Company


Hazel Y. Goodger

* Hand Delivery